JOHN G. HAFERNICK

IBLA 82-443 Decided November 30, 1982

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting application for conveyance of Federally-owned mineral interest. NM 43352TX.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no know mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

APPEARANCES: John G. Hafernick, pro se; John H. Herrington, Esq., Office of the Solicitor, U.S. Department of the Interior, Sante Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

John G. Hafernick appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 17, 1981, rejecting his application to purchase the Federally-owned mineral interest underlying certain lands in Eastland County, Texas. By quitclaim deed dated October 11, 1957, the United States acquired the subject mineral interest, more specifically, an undivided one-half interest in and to all of the oil, gas, and/or other minerals in an 83.75-acre parcel in Eastland County, from the Federal

Farm Mortgage Corporation. The surface of these lands, located in S 1/2 SW 1/4 sec. 125, H&TCRR Survey, Block 3, was purchased by appellant shortly thereafter in November 1957 under a contract of sale and purchase from the Veterans Land Board of Texas.

Appellant's application was submitted pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), and the implementing regulations at 43 CFR 2720.0-2. The statute provides:

> The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

BLM rejected appellant's application because it found that the lands have known mineral values and because appellant failed to show that the Federal mineral reservation interferes with the use of the surface. BLM's statement that the lands have known mineral values was based upon a determination by Geological Survey (Survey) that the minerals underlying the S 1/2 SW 1/4 sec. 125 have prospective value for oil and gas. This determination in turn was based upon Survey's information that this general area is part of a large oil and gas producing region in north central Texas in which oil and gas exploration and development has occurred for many years. Survey also reported that at least eight potential oil and gas zones of Pennsylvania age have been produced in this area from 360 to 3,700 feet deep, and several zones were productive in Mississippian and Ordovician age rocks from 3,800 to 4,600 feet deep. Thin bituminous coal beds of Pennsylvania and Lower Permian age are reported nearby, Survey states, but their commercial value, if any, is unknown and would require an exploration program to evaluate.

Appellant contends that BLM's determination that the lands have known mineral values is in error because the lands have never been leased for oil or gas during his ownership of the surface. Appellant states that the surface is used for agricultural purposes, i.e., for raising cattle and crops, and for firewood. The shallow fresh water strata is ideal for a pecan orchard in appellant's view.

Geological Survey is the Secretary's technical expert in matters concerning geological evaluation of tracts of land, and the Secretary is entitled to rely on Survey's reasoned analysis. Dean A. Clark, 53 IBLA 362 (1981). The burden is on appellant to present a convincing and persuasive argument to rebut BLM's determination that the subject land has mineral values. David D. Plater, 55 IBLA 296 (1981). Appellant's statement pointing out the lack of oil and gas leasing on the subject lands since 1957 does not compel a reversal

of Survey's finding. In Dean A. Clark, supra at 363, this Board held that the existence of two dry holes did not establish the absence of mineral values in lands nearby. In the present case, the absence of oil and gas leasing on the subject lands can hardly be judged to be more persuasive evidence of the land's mineral value.

By appellant's own pleadings, the present use of the subject land is agricultural. Appellant's future plan for the land is similarly agricultural. No explanation is offered by appellant how the present reservation of minerals by the United States is interfering with or precluding nonmineral development of the land. Section 209(b)(1) specifically requires appellant to make this showing or to establish that there are no known mineral values in the land. The reservation of minerals by the Government has not interfered with the agricultural use of the land in the past. Inasmuch as a similar use is planned for the future, the presence of the reservation appears to be immaterial.

Further, we note that appellant has not shown that the intended non-mineral development of the lands is a more beneficial use of the land than mineral development. We have only appellant's statement that a pecan orchard would be ideal in the present location. Section 209(b)(1) is not satisfied by the mere allegation that agricultural use is more beneficial.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge